



Hogan Lovells US LLP  
525 University Avenue  
4th Floor  
Palo Alto, CA 94301  
T +1 650 463 4000  
F +1 650 463 4199  
[www.hoganlovells.com](http://www.hoganlovells.com)

Via E-Filing

July 17, 2012

Hon. Phyllis J. Hamilton  
United States District Judge  
U.S. District Court  
Oakland Courthouse  
Courtroom 3 - 3rd Floor  
1301 Clay Street  
Oakland, CA 94612

Re: *Kovtun v. VIVUS, Inc. et al.*, Case No. 4:10-CV-04957-PJH

Dear Judge Hamilton:

We write on behalf of VIVUS, Inc. ("VIVUS"), Leland F. Wilson, and Wesley W. Day, Ph.D., defendants in the above-captioned action (together, "Defendants"). Defendants' motion to dismiss lead plaintiff's Second Amended Complaint was argued and submitted on April 18, 2012. Pursuant to Local Rule 7-3, Defendants request leave to provide the Court with a very brief, non-argumentative letter updating Your Honor concerning the status of the U.S. Food and Drug Administration's consideration of VIVUS's New Drug Application for Qnexa, and of a pair of recent case decisions that may be relevant to the pending motion. Should the Court grant leave to submit such a letter, Defendants would submit it within 24 hours of the Court's order. Defendants appreciate the Court's consideration of this request.

Very truly yours,



Michael L. Charlson / BTD

Michael L. Charlson  
Partner  
[Michael.Charlson@hoganlovells.com](mailto:Michael.Charlson@hoganlovells.com)  
D 650 463 4003

cc: David Brower, Esq.

7/24/12

